

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Astrolink International LLC)
Application for Authority to Construct,) File Nos. 182 through 186 SAT-P/LA-95
Launch, and Operate a Ka-band Satellite System) and SAT-MOD-19971222-00200
in the Fixed-Satellite Service)
)

MEMORANDUM OPINION AND ORDER

Adopted: June 17, 2002

Released: June 18, 2002

By the Chief, Satellite Division:

I. INTRODUCTION

1. By this Order we, on our own motion, grant Astrolink International LLC (Astrolink), a waiver of its Ka-band construction commencement milestone. Although we conclude that Astrolink had no contract in effect as of its construction commencement deadline, we find that Astrolink has demonstrated sufficient progress to warrant a waiver. To ensure that Astrolink will complete construction of its satellite by its required June 2005 launch milestone, we condition this waiver on Astrolink entering into a non-contingent construction contract by January 2003.

II. BACKGROUND

2. In May 1997, as part of the first Ka-band processing round, the International Bureau (Bureau) authorized Lockheed Martin, Astrolink's predecessor-in-interest, to launch and operate a geostationary satellite orbit (GSO) system to provide fixed-satellite service (FSS) in portions of the Ka-band.1 Astrolink's proposed system consists of nine interconnected GSO FSS satellites assigned to five orbit locations. In its initial application, Astrolink also proposed to interconnect its satellites with inter-satellite links (ISLs). The Bureau, however, deferred granting ISL spectrum to Astrolink because the proposed bands were not available for ISL service at that time. In addition, the Bureau stated it would not impose system implementation milestones until Astrolink was assigned spectrum for its proposed ISLs.2 In 2001, the Bureau modified Astrolink's authorization to allow Astrolink to operate ISLs and specified additional downlink operating frequencies. The Bureau also assigned milestone requirements for the

1 In the Matter of Lockheed Martin Corporation, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, Order and Authorization, 12 FCC Rcd 23014 (Int'l Bur. 1997). On November 18, 1999, Lockheed amended its application to reflect the Commission's authorization of its change of ownership, File No. SAT-AMD-19991118-00111.

2 Astrolink International LLC, Application for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service, Order and Authorization, 16 FCC Rcd 2421 (Int'l Bur. 2001).

construction, launch, and operation of its satellite system. Astrolink's license, like all satellite licenses, required it to meet explicit implementation deadlines or milestones. The authorization specifies that failure to meet its milestones will render Astrolink's authorization null and void.

3. Consistent with Section 25.145(f) of our rules, Astrolink's first milestone required it to begin construction of its first satellite by January 2002.³ To determine whether Astrolink complied with the construction commencement milestone, the Satellite Division (Division) directed Astrolink to submit a copy of an executed contract verifying that construction had commenced and that Astrolink's satellite will be built within the time frame specified in its license.⁴ In response, Astrolink filed a copy of a construction contract executed with Lockheed Martin Corporation effective July 20, 1999. Astrolink also indicated, however, that the contract was terminated on October 13, 2001.

4. In March 2002, the Division informed Astrolink it did not have enough information on which to make a finding as to whether Astrolink is in compliance with its construction commencement milestone because it had not submitted an effective non-contingent contract demonstrating that it will be able to complete construction of and launch the satellite by the required milestone date.⁵ In response, Astrolink submitted additional information asserting that Astrolink had made substantial progress in constructing its first satellite.⁶ As of the January 2002 milestone deadline, Astrolink states that its spacecraft is 90 percent complete, and that the payload hardware and software and the antenna are 100 percent complete.⁷ In support, Astrolink submitted photographs of the completed payload, assembly and antenna. Astrolink further states that 95 percent of the spacecraft bus hardware and software is complete and all remaining necessary parts are on hand. Astrolink's submission also includes additional information regarding the circumstances of the termination of the construction contract and indicates that it holds the property rights to the spacecraft. Astrolink states that its owners are in active negotiations to restructure the business, which includes renegotiating procurement contracts. After the restructuring, Astrolink estimates that it will be in a position to complete construction and launch its first satellite within 16-20 months.⁸ This schedule, Astrolink asserts, includes sufficient "padding" to account for unexpected complications. According to Astrolink, the company is positioned to complete construction and launch its spacecraft by June 2005, the required deadline.⁹

III. DISCUSSION

5. Milestones are necessary to ensure that licensees build their systems in a timely manner and that orbital resources and spectrum are not being held by licensees unable or unwilling to proceed

³ 47 C.F.R. § 25.145(f). The remaining milestones require Astrolink to begin construction of its remaining satellites within two years of grant; launch at least one satellite into each of its assigned orbit locations within five years of grant, and to launch the remainder of its satellites by the date required by the International Telecommunications Union, June and July 2005. *Astrolink Modified Authorization*, at 2427.

⁴ Letter to Mark A. Grannis, Counsel for Teledesic LLC, from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division (January 28, 2002).

⁵ Letter to Peter A. Rohrbach, Counsel for Astrolink International LLC from Fern Jarmulnek, Deputy Chief, Satellite Division (March 27, 2002).

⁶ Letter to Fern Jarmulnek, Deputy Chief, Satellite Division, from Peter A. Rohrbach, Counsel for Astrolink International LLC (April 10, 2002) (*Astrolink Supplemental Filing*).

⁷ *Astrolink Supplemental Filing*, p. 1.

⁸ *Id.* at 2.

⁹ *Id.* at 4.

with their plans.¹⁰ Because it is in the public interest to ensure that licensees proceed expeditiously in completing construction of their systems and commencing service and are not blocking entry by other qualified service providers, the Commission has strictly enforced its milestone schedules.¹¹ To satisfy the construction commencement milestone, the Commission requires the execution of a non-contingent construction contract. The non-contingent requirement contemplates that there will be neither significant delays between the execution of the contract and the actual commencement of construction, or conditions precedent to construction.¹² Although Astrolink had commenced construction and maintains that this is sufficient to meet the first milestone, work had stopped and Astrolink had no contract in effect as of its construction commencement deadline. We therefore find that Astrolink has not met its construction commencement milestone. We find, however, given Astrolink's substantial progress toward completing the spacecraft that a waiver of the construction milestone is warranted.

6. Rules may be waived if there is good cause to do so.¹³ A waiver is appropriate if (1) special circumstances warrant a deviation from the general rule, and (2) such deviation would better serve the public interest than would strict adherence to the general rule.¹⁴ Generally, the Commission may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.¹⁵ In this instance, the fact that Astrolink's spacecraft is 90 percent complete constitutes a special circumstance justifying a waiver of the construction commencement milestone. Preliminary testing of the payload has already been successfully completed and preliminary tests performed on the constructed antenna indicate that the antenna meets or exceeds specifications.¹⁶ We find that it would not be in the public interest to cancel the license of a company that has completed construction of over 90 percent of its spacecraft and find that a waiver will not undermine the policy objective of the Commission to prevent spectrum warehousing.¹⁷ Because Astrolink has substantially completed construction of its first satellite and is presently working to renegotiate a contract, it has shown a firm commitment to proceed with its business plan. Consequently, we waive Astrolink's January 2002 implementation milestone.

7. In addition, Astrolink is actively working to renegotiate its construction contract. Once completed, Astrolink estimates that the time it will take to reestablish the vendor teams, complete construction and testing, and shipping and launch will be no more than 16-20 months. Astrolink maintains that its restructuring will be accomplished in sufficient time to complete construction and meet its launch milestone. To ensure that Astrolink is positioned to complete construction on a timely basis, we condition this waiver to require Astrolink to enter into a non-contingent contract for the construction of its first satellite by January 2003. We note that the time for Astrolink to commence construction for its remaining satellites is January 2003 and that Astrolink should be able to enter into a contract for its first satellite at this time as well. Failure to meet this condition of the waiver will render Astrolink's

¹⁰ Columbia Communications Corporation, *Memorandum Opinion and Order*, 15 FCC Rcd 15566, 15571 (Int'l Bur. 2000).

¹¹ Advanced Communications Corporation, *Memorandum Opinion and Order*, 10 FCC Rcd 13337 (Int'l Bur. 1995).

¹² Norris Satellite Communications, Inc., *Memorandum Opinion and Order*, 12 FCC Rcd 22299, 22303 (1997).

¹³ 47 C.F.R. § 1.3.

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 418 F.2d 1153, 897 F.2d 1166 (D.C. Cir. 1990).

¹⁵ *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁶ *Astrolink Supplemental Filing*, p. 2.

¹⁷ NetSat 28 Company, For Authority to Construct, Launch, and Operate a Ka-band Communications Satellite in the Fixed-Satellite Service in Orbital Location 95° W.L., *Memorandum Opinion and Order*, 16 FCC Rcd 11025 (2001); Earth Watch Incorporated, Modification of Authorization to Construct, Launch, and Operate a Remote Sensing Satellite System, *Order and Authorization*, 15 FCC Rcd 13594, 13597 (Int'l Bur., Sat. Div. 2000).

authorization null and void.

IV. CONCLUSION AND ORDERING CLAUSES

9. Based on the foregoing, we grant Astrolink, on our own motion, a waiver of the construction commencement milestone set forth in its authorization. Accordingly, IT IS ORDERED, that pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, a waiver of Astrolink International LLC's January 2002 construction commencement milestone is GRANTED.

10. IT IS FURTHER ORDERED that Astrolink International LLC must enter into a non-contingent satellite construction contract for the construction of its first satellite by January 2003.

11. This Order is issued under delegated authority, pursuant to Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
Chief
Satellite Division